Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 11 MAY 18, 1977 No. 20

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 77-124)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 27, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
April 18, 1977	$0.2151
April 19, 1977	0.2151
April 20, 1977	0.2152
April 21, 1977	0.2150
April 22, 1977	0.2145
Iran rial:	
April 18, 1977	$0.0141
April 19, 1977	0.0141
April 20, 1977	0.0141
April 21, 1977	0.0141
April 22, 1977	0.0140

Philippines peso:	
April 18, 1977	$0. 1340
April 19, 1977	0. 1340
April 20, 1977	0. 1340
April 21, 1977	0. 1340
April 22, 1977	0. 1345
Singapore dollar:	
April 18, 1977	$0. 4058
April 19, 1977	0. 4055
April 20, 1977	0. 4054
April 21, 1977	0. 4053
April 22, 1977	0. 4050
Thailand baht (tical):	
April 18, 1977	$0. 0490
April 19, 1977	0. 0490
April 20, 1977	0. 0490
April 21, 1977	0. 0490
April 22, 1977	0. 0450

(LIQ-3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77-125)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 26, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 77-106 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Finland markka:	
April 11, 1977	$0.2471
April 12, 1977	0.2485
April 13, 1977	0.2488
April 14, 1977	0.2482
April 15, 1977	0.2484
April 18, 1977	0.2490
April 19, 1977	0.2479
April 20, 1977	0.2470
April 21, 1977	0.2475
April 22, 1977	0.2473

(LIQ-3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 77-126)

Customs Service decision

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 2, 1977.

The following is the substance of a recent decision made by the United States Customs Service where the issue involved is of sufficient general interest or importance to warrant publication in the Customs Bulletin.

(ADM-9-03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Drawback—Assembly of watch parts

The Customs Service was asked to rule whether a certain assembly of wrist watch parts constitutes a "manufacture or production" within the meaning of section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), which, in part, provides that upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 percent of such duties, with certain exceptions not relevant here.

The assembly process in question consisted of permanently attaching, in the United States, an imported watch head, which was designed to hold an electronic module, to a wrist watch bracelet or strap. The ends of the bracelet or strap were fitted with a double-ended pushpin. The assembly process was accomplished by placing the ends of each pushpin into the appropriate holes in the watch head. After exportation, the assembled product was to be further assembled into a finished wrist watch by installing an electronic module in the watch head.

In *Ishimitsu* v. *United States*, 11 Ct. Cust. App. 186, T.D. 38963 (1921), the Court of Customs Appeals stated that, in order to constitute a manufacture or production, "it must appear that something has been produced so changed or advanced in condition from what it was before being subjected to the processing or treatment that whether of only one material or of more than one, it has attained a distinctive name, character or use, different from that originally possessed by the material or materials before being subjected to the manufacturing process." This continues to be the position of the Customs Service.

Decided, inasmuch as the assembly process by which a watch head was attached to a wrist watch bracelet or strap did not produce a product with a distinctive name, character, or use, it did not constitute a "manufacture or production" within the provisions of section 313 of the Tariff Act of 1930, as amended. Accordingly, drawback was not available with respect to the exported product. (096305)

JOHN P. TEBEAU,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 77-127)

Countervailing Duties–Sugar Content of Certain Articles from Australia

Net amount of bounty declared for the period July 1976 through December 1976, for products of Australia subject to the countervailing duty order published in T.D. 54582. Section 159.47(f), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

AGENCY: United States Customs Service, Treasury.

ACTION: New amounts of countervailing duty determined.

SUMMARY: This notice is to inform the public of the amounts of countervailing duty which will be assessed on the sugar content of certain articles exported from Australia during the period July 1976 through December 1976. Section 159.47(f) of the Customs Regulations is being amended to include this notice.

EFFECTIVE DATE: May 9, 1977.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C., telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: The Treasury Department is in receipt of official information that the rates of bounties or grants paid or bestowed within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), on the exportation during the period July 1976 through December 1976, of approved fruit products and other approved products manufactured or produced in Australia are the amounts shown in the following table. The amounts shown are in Australian dollars, per 1,000 kilograms of sugar content.

Month	*Approved Fruit Products*	*Other Approved Products*
July 1976	Nil	Nil
August 1976	Nil	Nil
September 1976	Nil	Nil
October 1976	Nil	Nil
November 1976	Nil	Aus. $7.50
December 1976	Nil	Nil

The net amounts of bounties or grants on the above-described merchandise are hereby ascertained, determined, or estimated to be the rates stated in the above table. Additional duties on the above-described merchandise, whether imported directly or indirectly from that country, equal to the net amounts of the bounty shown above shall be assessed and collected pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), under "Australia—Sugar content of certain articles" is amended (1) by deleting therefrom the reference to T.D. 75–54, and (2) by adding a reference to this Treasury Decision. As amended, the last four lines of the table under this commodity will read:

Country	Commodity	Treasury Decision	Action
		55716	Certain articles exempted as to shipments exported on or after July 19, 1962
		76–167	New rate
		76–214	New rate
		77–127	New rate

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624))

(APP–4–05)

VERNON D. ACREE,
Commissioner of Customs.

Approved April 27, 1977,
JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register May 9, 1977 (42 FR 23505)]

233-201—77——2

(T.D.-128)

Countervailing Duties-Certain Fasteners From Japan

Notice of Countervailing Duty to be imposed under Section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowed of a bounty or grant upon the manufacture, production, or exportation of certain fasteners from Japan

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1–UNITED STATES CUSTOMS SERVICE

PART 159–LIQUIDATION OF DUTIES

AGENCY: Customs Service, Treasury Department

ACTION: Imposition of Countervailing Duties

SUMMARY: This notice is to inform the public that it has been determined that the Government of Japan has given benefits which constitute bounties or grants within the meaning of the Countervailing Duty Law upon the manufacture, production or exportation of certain fasteners. Consequently countervailing duties in the amount of these benefits will be collected in addition to duties normally due on shipments of this merchandise.

EFFECTIVE DATE: May 6, 1977.

FOR FURTHER INFORMATION CONTACT: John Kugelman, operations officer, Technical Branch, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On October 27, 1976, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (41 FR 47085). The notice stated that it preliminarily had been determined that benefits had been received by the Japanese manufacturers/exporters of nuts, bolts, and cap screws having shanks or threads over 0.24 inch in diameter, of iron or steel, which may constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (herein referred to as "the Act").

These nuts, bolts and cap screws are provided for in the Tariff Schedules of the United States under item numbers 646.54, 646.56, and 646.63.

The notice stated that the programs under which these benefits were conferred included tax deferrals under the Overseas Market Development Reserve (OMDR), promotional assistance from the Japan External Trade Organization (JETRO), and preferential export financing provided by the Japanese Export-Import Bank. Programs preliminarily determined not to be bounties or grants within the meaning of the Act included:

1. Tax exemptions for expenses incurred in developing new markets.
2. Subsidies for research and development in the form of preferential tax treatment, direct payments, loans and research and development of services provided by the Small Business Promotion institutes and laboratories.
3. Preferential financing and grants for small and medium enterprises provided by the Small Business Promotion Corporation, The Small Business Finance Corporation, the People's Finance Corporation and the Bank for Commerce and Industrial Cooperatives.
4. Tax reductions for small and medium business.
5. Tax exemption for dues of trade associations.
6. Government assistance to employees temporarily laid off.
7. Alleged benefits to the steel industry that provide indirect assistance to the fastener industry.
8. Special depreciation.
9. Regulations governing lending practices to small enterprises.
10. Measures allowing for restrictions by commerce and industrial cooperatives to restrict production and expansion.
11. Fair Trade Act program.
12. The Law on the Prevention of the Deferment of Payment of Subcontractors.
13. Supervision of large department stores.
14. The expensive gift program.
15. The program covering the agreement for large industry to advance into the areas of small and medium enterprises.
16. The law regarding the securing of orders by small and medium enterprises for public sources.
17. Government backed quality control procedures.
18. Risk insurance provided by the Government for exports.

Point #2 above was incorrect due to a printing error and should have read as follows:

2. "Subsidies for research and development in the form of preferential tax treatment, direct payment, loans and research and development services provided by *government sponsored national* institutes and laboratories." (corrected wording *italicized*).

The practice which preliminarily had been determined not to constitute a bounty or grant on grounds that it is either not applicable to or has never been utilized by the fastener industry is government financing or acquisition or installation cost of machinery and equipment.

The notice provided interested parties 30 days from the date of publication to submit relevant data, views, or arguments, in writing, with respect to the preliminary determination.

After consideration of all information received, and on the basis of information received since the preliminary determination, it is hereby determined that bounties or grants are being paid or bestowed, directly or indirectly on exports of certain fasteners from Japan within the meaning of section 303 of the Act.

Fastener exports receive benefits from programs involving promotional assistance from the Japan External Trade Organization (JETRO) and interest-free loans in the form of tax deferrals under the Overseas Market Development Reserve which result in an aggregate benefit of .20% *ad valorem*. Ordinarily, benefits of this size might be considered *de minimis* in relation to the value of the merchandise concerned. However, with respect to certain of the fasteners under consideration here, those classifiable under TSUS item numbers 646.54 and 646.56, the benefits bestowed are significant when compared to the *ad valorem* equivalent of the trade agreement (Column 1) rate of ordinary customs duties. These duties are .2¢ per lb. for 646.54 and .1¢ per lb. for 646.56, which at 1976 unit prices are equal to .75% and .25% respectively on an *ad valorem* basis. With regard to these items it is, accordingly, deemed appropriate to consider the benefits as being more than *de minimis* and therefore constituting bounties or grants. With regard to the remaining fasteners, those imported under TSUS number 646.63, the ordinary customs duty is 9.5% *ad valorem* and the .20% benefit is considered to be *de minimis* in relation to the value of exported fasteners. Accordingly, countervailing duties of .20% *ad valorem* will be limited to Japanese fastener imports under item numbers 646.54 and 646.56 of the Tariff Schedules of the United States.

It further has been determined that the fasterner industry of Japan is not receiving benefits in the form of preferential loans from the Export-Import Bank of Japan since that industry does not qualify for such loans.

Further inquiry was made into alleged preferential loans made by the People's Finance Corporation, the Bank for Commerce and Industrial Co-operatives, and the Small Business Finance Corporation

based on additional information submitted by petitioner showing that appropriated monies to these government enterprises were substantial enough to look further into their application to the fastener industry. Loans from these agencies are made to industries whose paid in capital does not exceed a specified figure. It is determined that loans at preferential interest rates made by these organizations do not described a bounty or grant within the meaning of the Act based on the absence of criteria establishing export performance as a precondition to obtaining such loans combined with the fact that no more than 20% of Japanese fastener production is exported. The *ad valorem* benefit realized from these preferential loans by the fastener industry was approximately .08% of the value of total production during 1975.

Loans made by the Japan Development Bank for the installation of machinery and equipment from 1964 to 1971 were utilized by the fastener industry during that time. However, in view of the fact that less than 20% of fastener production is exported, such loans at preferential rates relating to capital investment would not constitute a bounty or grant within the meaning of the Act.

All other practices noted in the preliminary determination have been found not to constitute a bounty or grant in that they do not on their face describe a bounty or grant or because the allegations are too vague or remote from the fastener industry to warrant further investigation.

Accordingly, notice is hereby given that certain fasteners covered under TSUS numbers 646.54 and 646.56, which are imported directly or indirectly from Japan, if entered or withdrawn from warehouse, for consumption on or after May 6, 1977, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act, until further notice the net amount of such bounties or grants has been estimated and declared to be .2 percent of the export price.

Effective May 6, 1977, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable fasteners, covered under TSUS numbers 646.54 and 646.56, imported directly or indirectly from Japan, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

Any merchandise subject to the term of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of such fasteners from Japan.

233-201—77——3

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.46(f)) is amended by inserting after the last entry from Japan the words "Certain fasteners," in the column headed "Commodity," the number of this Treasury Decision in the Column headed "Treasury Decision," and the words "Bounty Declared Rate" in the column headed "Action."

(R.S. 251, as amended, section 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624.))

(APP-4-05)

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

April 29, 1977

[Published in the Federal Register May 6, 1977 (42 FR 23146)]

Decisions of the United States Customs Court

Customs Decision

(C.D. 4694)

PREPAC, INC. *v.* UNITED STATES

Picnic bags

Plastic picnic bags having handles and zipper closures claimed to be classifiable as articles of plastics under item 774.60, Tariff Schedules of the United States, *held* properly classified under item 706.60, *supra*, as luggage.

The utilization of language in the legislative history to include bags fitted for dining and drinking is indicative of an intent to include within subpart D, schedule 7, part 1, luggage or travel goods used for those purposes.

Court Nos. 72–6–01379–S, etc.

Port of New York

[Judgment for defendant.]

(Decided April 22, 1977)

Serko & Simon (*Gerald B. Horn* and *Joel K. Simon* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Velta A. Melnbrenics*, trial attorney), for the defendant.

FORD, Judge: These severed actions consolidated for the purpose of trial, involve plastic articles described on the invoices as picnic bags and designated as style nos.: 153, 154, 179, 186 and 188. The merchandise described above was classified as luggage under item 706.60, Tariff Schedules of the United States, and assessed with duty at the rate of 20 per centum ad valorem.

Plaintiff claims said bags are not luggage, nor are they *ejusdem generis* with the articles enumerated in schedule 7, part 1, subpart D, headnote 2(a)(i) of the Tariff Schedules of the United States. Accordingly, it is contended they are properly subject to classification as other articles of plastics not specially provided for under item 774.60, Tariff Schedules of the United States, as modified by T.D. 68–9, and, as such, subject to duty at the rate of 10 per centum ad valorem or 8.5 per centum ad valorem, depending upon the date of importation. Claims as to all other merchandise or styles were abandoned by plaintiff at the trial and are accordingly dismissed.

The statutory provisions as are pertinent herein provide as follows:

Schedule 7, Part 1, Subpart D:

Subpart D headnotes:

* * * * * * *

2. For the purposes of the tariff schedules—
   (a) the term "luggage" covers—
      (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel; and
      (ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and

like containers and cases designed to be carried with the person, except handbags as defined herein;

* * * * * * *

Luggage and handbags, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets; and flat goods:

* * * * * * *

Of other materials:

* * * * * * *

706.60	Other	20%	ad val.

* * * * * * *

Part 12. – Rubber and Plastic Products

* * * * * * *

Subpart D. – Articles Not Specially Provided For, of Rubber or Plastics

* * * * * * *

774.60	Other	10%	ad val. [1971] or 8.5% ad val. [1972, 1973]

Based upon this record plaintiff contends the imported picnic bags are not *ejustem generis* with the exemplars set forth in headnote 2(a) of schedule 7, subpart D, which defines luggage. This position, plaintiff urges, is warranted since the phrase in headnote 2(a)(i) "and like articles designed to contain clothing or other personal effects during travel" is used. Food and beverages, according to plaintiff, are not personal effects.

Defendant, on the other hand, contends the imported bags fall within the purview of the definition of luggage contained in the headnote by virtue of the statutory scheme of the Tariff Schedules of the United States and the legislative history. Defendant also urges the rule of construction, *ejusdem generis*, is applicable only where the legislative intent is in doubt, or is ambiguous, and in any event is not invoked for the purpose of narrowing, limiting, or circumscribing the enactment. *Sandoz Chemical Works, Inc.* v. *United States*, 50 CCPA 31, C.A.D. 815 (1963).

Plaintiff's reliance on *Adolco Trading Co.* v. *United States*, 71 Cust. Ct. 145, C.D. 4487 (1973), is misplaced. In the *Adolco* case, the merchandise involved plastic shopping bags which the court held not to be luggage, nor *ejusdem generis* with the exemplars set forth in headnote 2(a) of schedule 7, subpart D. In arriving at this conclusion the court therein made the following observations:

The record consists of the testimony of four witnesses, two called on behalf of each party. In addition, eight exhibits were received on behalf of plaintiff and eight exhibits for defendant. Three of the four witnesses testified the use of the involved bags was to carry food and beverages as well as picnic supplies. Defendant's witness, Wiskin, an attorney with the Department of Justice, testified he used a similar type of bag to carry baby supplies such as diapers, extra clothing, books and toys, as well as food. In the opinion of the court the carrying of baby supplies is a fugitive use and not indicative of the primary use of such bags.

The record establishes without contradiction that the bags involved are of various sizes and decorations and are composed of plastic. The bags have one or two handles, have a zippered enclosure and are insulated with fiberglass or polyethylene. The insulation is for the purpose of keeping the food and beverage warm or cool, as desired. Such items are sold to major department stores, discount stores, supermarket chains, variety stores and drug chains.

> The bags involved herein are not among the named articles in either subsection. The question thus is whether they are "like articles designed to contain clothing or other personal effects during travel" or "like containers and cases designed to be carried with the person, except handbags."
>
> The exemplars in subsection (i) are all articles customarily used for travel, which can be closed and usually locked. The bags before the court cannot be locked or even closed securely. They could not be handled as checked baggage on trains, buses or airplanes, because the articles in them would fall out when given normal baggage handling. For the same reason, they could not be placed in overhead racks or airplane lockers. Moreover, people do not ordinarily carry personal clothing in open bags where it can become soiled or is in danger of falling out. The instant bags are not designed or suitable for carrying clothing or personal effects during travel, and according to the evidence presented, are rarely so used. * * *

In the case at bar the bags may be securely closed, as each of them has a zipper, which would prevent articles from falling out or being stolen. In addition, it is apparent the shopping bags were not used for travel. In the case at bar the bags are used for the convenience of the user while traveling (carrying food in an automobile or for picnic purposes).

The imported picnic bags do not appear to fall within the common understanding of luggage, and while food or beverage is not ordinarily considered personal effects, the primary purpose of the court is to ascertain the intent of Congress in enacting this provision.

In order to ascertain this intent the court may consult the Tariff Classification Study (1960). *Mego Corp.* v. *United States*, 62 CCPA 14, C.A.D. 1137, 505 F.2d 1288 (1974).

The following information is contained in the Tariff Classification Study, Schedule 7, part 1, subpart D, at pages 47 and 51:

> In the Tariff Act of 1930 specific provision is made in paragraph 1531 for luggage, handbags, and billfolds, coin purses and similar "flat" goods wholly or in chief value of leather. When the Act of 1930 was passed, probably the bulk of these articles were made principally of leather, but today they are made principally of materials other than leather. Certain of these articles of metal and designed to be carried on the person, such as handbags, coin purses, and cigarette cases, are specifically provided for in tariff paragraph 1527(c). Luggage, handbags, and flat goods of all other materials, however, are dutiable under various "catch-all" paragraphs throughout the tariff act according to component material of chief value, unless that material happens to be one which imitates leather, in which case the articles are dutiable at the rates applicable to leather articles by virtue of the similitude provisions of paragraph 1559. This subpart brings together all of these scattered provisions in a single group of greatly simplified, related provisions.
>
> This subpart would cover all luggage, handbags, and flat goods of whatever material composed, except cases for musical instruments (schedule 7, part 3), cases suitable for pipes or for cigar or cigarette holders (schedule 7, part 9), and cases, purses, or boxes of precious metals or precious stones (provided for in the schedule on jewelry, schedule 7, part 6A). The luggage and handbags covered here may be fitted with bottle, dining, drinking, manicure, sewing, traveling or similar sets of a type used for convenience while traveling, in which case the set is dutiable in this subpart with the containing luggage or handbag, but this subpart does not cover cases designed to hold, and ordinarily sold at retail with, other types of articles, such as a camera case, a binocular case, or a microscope case, when imported with the article which it is designed to hold. When so imported, such cases are dutiable with the article. When imported in separate shipments without the article, however, such cases are covered by this subpart.
>
> * * * * * * *
>
> Item 706.60 is the basket provision for this subpart to cover all other luggage, handbags, and flat goods. The proposed rate for this item is 20 percent ad valorem which is an approximate weighted average of the numerous rates now applicable to imports of these commodities. Articles covered by this item are now dutiable under paragraph 31(a) (2) (plastic articles) * * *.

The utilization of the language to include bags fitted for dining and drinking is indicative of an intent to include within this subpart luggage or travel goods used for those purposes. The record herein is incontroverted with respect to the use of the imported picnic bags, viz., to carry food and beverages on trips. Accordingly, it is clear that the intent in enacting this provision was to encompass such travel goods as are primarily used for travel which are utilized for food and beverage.

The claim for classification under item 774.60, *supra*, is therefore overruled and judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 25, 1977.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P77/44	Watson, J. April 20, 1977	Volkswagen of America, Inc.	73-6-01611	Item 409.00 6.3¢ per lb.+ 40%; 4.9¢ per lb.+31%; 4¢ per lb.+ 27%; or 3.5¢ per lb.+ 22.5%	Item 405.25 2.5¢ per lb.+ 16%; 1.9¢ per lb.+12.5%; 1.6¢ per lb.+ 10.5%; or 1.4¢ per lb.+9%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Baltimore; Honolulu; San Francisco; Philadelphia; Portland, Oreg. Benzenoid alkyd resin paints
P77/45	Ford, J. April 21, 1977	Associated Dry Goods Corp.	71-6-00442, etc.	Item 653.37 13%, 11% or 9.5%	Item 653.35 7%, 6% or 5%	U.S. v. Morris Friedman & Co. (C.A.D. 1157)	New York Candlesticks, candleholders, etc.

P77/46	Richardson, J. April 21, 1977	General Instrument Corporation	73-6-01511, etc.	Item 685.20 10%, 9%, 8%, 7%, 6% or 5% (color delay lines, yokes, flybacks, tuners, convergence box assemblies) Without allowance under item 807.00	As assessed, *supra*, with cost or value of U.S. components (items marked "F", "J", "K", "M", "P") deductible from full value of imported merchandise pursuant to item 807.00	General Instrument Corporation v. U.S. (C.A.D. 1128) (items marked "J") General Instrument Corporation v. U.S. (C.D. 4507) (items marked "K") Agreed statement of facts (items marked "F", "M", "P")	New York; Springfield (Boston); San Francisco American goods returned; color delay lines, yokes, flybacks, tuners, convergence box assemblies; U.S. components marked "F", "J", "K", "M", "P", respectively
P77/47	Richardson, J. April 21, 1977	F. W. Myers & Co., Inc.	74-7-01813	Item 722.50 24%	Item 678.50 7%	Agreed statement of facts	New York No-rewind systems, not parts of projectors; machines
P77/48	Watson, J. April 21, 1977	Volkswagen of America, Inc.	72-7-01531	Item 409.00 6.3¢ per lb.+40%; 5.5¢ per lb.+36%; 4.9¢ per lb.+31%; or 4¢ per lb.+27%	Item 405.25 2.5¢ per lb.+16%; 2.2¢ per lb.+14%; 1.9¢ per lb.+12.5%; or 1.6¢ per lb.+10.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	New York; Philadelphia; Los Angeles; Baltimore; Houston; Chicago; Portland, Oreg.; Boston; New Orleans; Honolulu; San Francisco; Jacksonville (Tampa) Benzenoid alkyd resin paints
P77/49	Watson, J. April 21, 1977	Volkswagen of America, Inc.	74-7-01664	Item 409.00 4¢ per lb.+27%	Item 405.25 1.6¢ per lb.+10.5%	U.S. v. Volkswagen of America, Inc. (C.A.D. 1115)	Los Angeles Benzenoid alkyd resin paints
P77/50	Watson, J. April 21, 1977	Zunino Altman, Inc.	67/14887	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Plastic artificial flowers

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/20	Re, C.J. April 20, 1977	S. S. Pennock Co. et al.	75-4-00990, etc.	Export value	Chrysanthemums, 12¢ per flower, net packed; carnations—6¢ (select), 5¢ (fancy), 4¢ (standard), 2¢ (short), 5¢ (other), per stem, net packed; pompons, 60¢ per bunch, net packed (covered by actions on schedule A attached to decision and judgment) Entries marked with an	Agreed statement of facts	Miami Cut flowers

					"•" in schedule A not liquidated; protests premature; actions dismissed entries returned to district director for further administrative action Certain protests not denied; Court No. 75-2-01062 dismissed as to such protests		
R77/21	Re, C.J. April 20, 1977	J. T. Steeb & Co.	R65/21004, etc.	Export value	Net appraised value less 7¼%, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R77/22	Richardson, J. April 21, 1977	Lone Star Finance Corp.	R65/23179, etc.	Cost of production	As specified in column designated "Claimed Value" on schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles (types 113 and 117)
R77/23	Richardson, J. April 21, 1977	Patrick & Graves	R66/1682, etc.	Cost of production	As specified in column designated "Claimed Value" on schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles (types 113 and 311)
R77/24	Richardson, J. April 21, 1977	Patrick & Graves	R66/22059	Cost of production	DM 3590.97 (type 113); DM 5044.74 (type 361)	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles (types 113 and 361)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/25	Watson, J. April 21, 1977	Sandoz, Inc.	R65/18323, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 32.6% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R77/26	Watson, J. April 21, 1977	Sandoz, Inc.	R67/2090, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R77/27	Watson, J. April 21, 1977	Sandoz, Inc.	R67/8239, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

Judgments of the United States Customs Court in Appealed Cases

APRIL 21, 1977

APPEAL 76–2.—United States *v.* Avdel Corp.—RIVETS COMPOSED OF STEEL AND ALUMINUM—CHIEF WEIGHT TEST V. CHIEF VALUE TEST—TSUS—SUMMARY JUDGMENT.—Order of 8/26/75 (abs. P75/510) reversed and remanded January 13, 1977. C.A.D. 1182.—Judgment entered vacating and setting aside 8/26/75 order; denying plaintiff's motion for summary judgment; and ordering parties to advise the Customs Court of their intentions to proceed to final resolution of the actions.

APPEAL 76–16.—United States *v.* Norman G. Jensen, Inc.—"TREE FARMERS"—OTHER TRACTORS—TRACTORS SUITABLE FOR AGRICULTURAL USE—TSUS.—C.D. 4634 affirmed March 10, 1977. C.A.D. 1183

APRIL 22, 1977

APPEAL 77–3.—United States *v.* Hub Floral Corporation.—CHENILLE STEMS—ARTIFICIAL FLOWERS, PARTS OF—WIRE COVERED WITH TEXTILE MATERIAL—TSUS.—C.D. 4669. Appeal dismissed April 5, 1977.

Appeal to United States Court of Customs and Patent Appeals

APPEAL 77–19.—United States *v.* Zenith Radio Corporation.—AMERICAN MANUFACTURER'S ACTION—VARIOUS CONSUMER ELECTRONIC PRODUCTS EXPORTED FROM JAPAN—COUNTERVAILING DUTY—JAPANESE COMMODITY TAX LAW—REMISSION AND ABATEMENT OF TAXES—INDIRECT BOUNTY OR GRANT—CROSS-MOTIONS FOR SUMMARY JUDGMENT. Appeal from C.D. 4691.

Various consumer electronic products (television receivers, radio receivers, radio-phonograph combinations, radio-television-phonograph combinations, radio-tape recorder combinations, record players and phonographs complete with amplifiers and speakers, tape recorders, tape players, and color television picture tubes) of a kind produced in the United States by plaintiff-appellee, an American manufacturer, were produced in and exported from Japan into the United States; classified and assessed in liquidation with regular duties under the TSUS. Plaintiff petitioned the Secretary of the Treasury for the imposition of countervailing duties on such imported products in accordance with 19 U.S.C. § 1303, and following the denial of its administrative petition, instituted the involved action in the Customs Court

pursuant to 19 U.S.C. § 1516(d), as amended by the Trade Act of 1974, for judicial review of the negative countervailing duty determination of the Secretary of the Treasury. On motion and cross-motion for summary judgment filed by the parties the record disclosed that under Japanese Commodity Tax Law (March 31, 1962, Law No. 48) as revised, a single-stage consumption tax, ranging in amount from 5 to 40 percent, is levied at the manufacturing level on a fairly extensive list of consumer goods, inclusive of the imported products, and that upon exportation of these products from Japan the consumption tax is either remitted if previously paid, or is abated if not paid. A three-judge panel of the Customs Court held that the remission and abatement of consumption taxes by the Japanese Government under Commodity Tax Law No. 48 constituted the payment of a bounty or grant within the meaning of section 1303. *Downs* v. *United States*, 187 U.S. 496 (1903) followed. An order was entered granting plaintiff's motion for summary judgment; denying defendant's cross-motion for summary judgment; and directing the Secretary of the Treasury "to ascertain and determine or estimate the net amounts of the bounty or grant paid or bestowed on the exportation of the subject electronic products from Japan and to order the appropriate customs officers throughout the United States to assess countervailing duties, in said net amounts equal to the said bounty or grant, on the subject electronic products exported from Japan, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of this Order."

It is claimed that the Customs Court erred in finding and holding that the exemption, under the Commodity Tax Law of Japan of the subject electronic products from a commodity tax, when exported from Japan, or the refund of such tax upon the exportation from Japan of such electronic products constitutes the payment or bestowal of a net bounty or grant within the embrace of section 303 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1303; in directing the Secretary of the Treasury to order the appropriate customs officers throughout the United States to assess countervailing duties on the above enumerated electronic products exported from Japan, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of the Customs Court's order; in directing the Secretary of the Treasury to act contrary to law; in finding and holding for the appellee (plaintiff below), contrary to law.

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U.S. Customs Service

Customs Court

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(TREAS. 552)

U.S. GOVERNMENT PRINTING OFFICE: 1977